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5 Attorney for Defendant  
6 LAURA SYLVIA MENDOZA-GOVAN

7 **UNITED STATES DISTRICT COURT**  
8 **NORTHERN DISTRICT OF CALIFORNIA**

9  
10 J & J SPORTS PRODUCTIONS, INC., ) Case No. C10-05123 BZ  
11 )  
Plaintiff, )  
12 vs. ) **ANSWER TO UNVERIFIED**  
13 ) **COMPLAINT FOR DAMAGES AND**  
LAURA SYLVIA MENDOZA-GOVAN ) **DEMAND FOR JURY TRIAL**  
14 individually and d/b/a KIMBALL'S SPORTS )  
BAR a/k/a KIMBALLS CARNIVAL, )  
15 Defendant. )  
16 )

17 In answer to plaintiff's Complaint, defendant LAURA SYLVIA MENDOZA-GOVAN,  
18 an individual, on behalf of herself alone, admits, denies and alleges as follows:

19 **DEMAND FOR JURY TRIAL**

20 Defendant demands a trial by jury.

21 **GENERAL DENIAL**

22 This answering defendant generally and specifically denies each and every allegation  
23 contained in plaintiff's Complaint, and the whole thereof, and each and every alleged cause of  
24 action thereof, and denies that the Plaintiff sustained damages in the sum or sums alleged, or in  
25

1 any sum, or at all, by reason of any act, conduct, violation, breach or omission on the part of this  
2 answering defendant.

3 AFFIRMATIVE DEFENSES

4 By way of affirmative defenses, to all causes of action, defendant alleges:

5 FIRST AFFIRMATIVE DEFENSE

6 As and for a first separate and affirmative defense to each and every cause of action in  
7 the Complaint, defendants allege that, even if arguendo the subject *Program* was indeed shown  
8 at defendant's establishment, the *Program* was not exhibited or shown to patrons, the public or  
9 on a non-private-use basis.

10 SECOND AFFIRMATIVE DEFENSE

11 As and for a second separate and affirmative defense to each and every cause of action in  
12 the Complaint, defendant alleges that, at all pertinent times, plaintiff did not have an exclusive  
13 license for the *Program*.

14 THIRD AFFIRMATIVE DEFENSE

15 As and for a third separate and affirmative defense to each and every cause of action in  
16 the Complaint, defendant is informed and believes and thereon alleges that the plaintiff lacks  
17 legal standing (contractual and statutory standing) to pursue claims for alleged exhibition of the  
18 Program or bring this Complaint and the claims asserted therein against defendant.

19 FOURTH AFFIRMATIVE DEFENSE

20 As and for a third separate and affirmative defense to each and every cause of action in  
21 the Complaint, defendant alleges that if plaintiff suffered any loss or damages, as alleged in the  
22 Complaint, which defendant expressly denies, such losses and damages were proximately caused  
23 or contributed to by conduct not attributable to defendant; such losses or damages were caused  
24 by the conduct of plaintiff and others.

1 FIFTH AFFIRMATIVE DEFENSE

2 As and for a fifth separate and affirmative defense to each and every cause of action in  
3 the Complaint, defendant alleges that she is not in violation of 47 USC §§ 605, et seq., 47 USC  
4 §§ 553, et seq. or California Business & Professions Code §§ 17200, et seq.

5 SIXTH AFFIRMATIVE DEFENSE

6 As and for a sixth separate and affirmative defense to each and every cause of action in  
7 the Complaint, defendant alleges that she has not engaged in any piracy, use of pirate firmware,  
8 illegal descramblers or black boxes, or illegal interception, receipt, publication, display,  
9 exhibition, transmission, or divulgence of the *Program*, as alleged in the Complaint. And,  
10 defendant is not a broadcaster under 47 USC §§ 605, et seq. and 47 USC §§ 553, et seq.

11 SEVENTH AFFIRMATIVE DEFENSE

12 As and for a seventh separate and affirmative defense to each and every cause of action in  
13 the Complaint, defendant alleges that plaintiff is not an aggrieved person as defined by 47 USC  
14 §§ 605, et seq. and 47 USC §§ 553, et seq.

15 EIGHTH AFFIRMATIVE DEFENSE

16 As and for an eighth separate and affirmative defense to each and every cause of action in  
17 the Complaint, defendant is informed, believes and thereon alleges that facts will be obtained  
18 during discovery to show that plaintiff's claims are barred by the equitable doctrines of estoppel,  
19 waiver and laches.

20 NINTH AFFIRMATIVE DEFENSE

21 As and for a ninth separate and affirmative defense to each and every cause of action in  
22 the Complaint, defendant is informed, believes and thereon alleges that facts will be obtained  
23 during discovery to show that plaintiff's claims (Counts I through IV in the Complaint) are  
24 barred by the applicable statutes of limitations under California law and federal law.

1 TENTH AFFIRMATIVE DEFENSE

2 As and for a tenth separate and affirmative defense to each and every cause of action in  
3 the Complaint, defendant alleges that statutory exceptions under 47 USC §§ 605(a), 605(b), et  
4 seq., apply to bar plaintiff's claims against defendant.

5 ELEVENTH AFFIRMATIVE DEFENSE

6 As and for a eleventh separate and affirmative defense to each and every cause of action  
7 in the Complaint, defendant alleges that if it is determined that defendant indeed engaged in the  
8 alleged violative conduct, such conduct was neither willful nor for financial gain or commercial  
9 advantage; rather, any such conduct was for based on a single subscriber reception, for which  
10 defendant received no payments, was for private use, was innocent and was without intent to  
11 violate any laws, injure plaintiff or any other entity or gain commercial advantage over plaintiff  
12 or other entity or person.

13 TWELFTH AFFIRMATIVE DEFENSE

14 As and for a twelfth separate and affirmative defense to each and every cause of action in  
15 the Complaint, defendant alleges that plaintiff fails to state facts sufficient to constitute a claim  
16 for relief against answering defendant.

17 THIRTEENTH AFFIRMATIVE DEFENSE

18 As and for a thirteenth separate and affirmative defense to each and every cause of action  
19 in the Complaint, defendant alleges that in the event that the trier of fact determines that  
20 defendant violated any provisions of 47 USC §§ 605, et seq. and 47 USC §§ 553, et seq.,  
21 defendant acted in a good faith belief in the propriety of her actions; and was not aware and had  
22 no reason to believe that her acts constituted a violation of these sections—warranting a  
23 reduction of any damages award against defendant. *47 USC §§ 553(c)(3)(C); 47 USC §§*  
24 *605(e)(3)(C)(II)(iii).*

1 FOURTEENTH AFFIRMATIVE DEFENSE

2 As and for a fourteenth separate and affirmative defense to each and every cause of  
3 action in the Complaint, defendant alleges that there are no legal, factual or equitable bases for  
4 an award of attorney's fees in plaintiff's favor and against defendant.

5 FIFTEENTH AFFIRMATIVE DEFENSE

6 As and for a fifteenth separate and affirmative defense to each and every cause of action  
7 in the Complaint, defendant alleges that service of process was insufficient, in that plaintiff did  
8 not serve the summons on defendant as required by applicable law. *FRCivP 4(e); California*  
9 *Code of Civil Procedure §§415.10 and 415.20.*

10 SIXTEENTH AFFIRMATIVE DEFENSE

11 As and for a sixteenth separate and affirmative defense to each and every cause of action  
12 in the Complaint, defendant alleges that plaintiff is subject to sanctions pursuant to Federal Rules  
13 of Civil Procedure, rule 11, because the complaint is unsupported by the facts or the law and is  
14 prosecuted merely as harassment. Furthermore, the Complaint was brought without reasonable  
15 care and without a good faith belief that there was a justifiable controversy under the facts and  
16 the law. Plaintiff is therefore liable to defendant, for all necessary and reasonable defense costs,  
17 including attorneys' fees, under *California Code of Civil Procedure, § 128.5.*

18 SEVENTEENTH AFFIRMATIVE DEFENSE

19 As and for a seventeenth separate and affirmative defense to each and every cause of  
20 action in the Complaint, defendant alleges that plaintiff cannot recover for conversion because,  
21 among other reasons, plaintiff did not own, possess or have a right to possess the *Program* (as  
22 defined by the Complaint); defendant did not intentionally take possession or use of the  
23 *Program*; and plaintiff was not damaged by any conduct of defendant. *Judicial Council of*  
24 *California Civil Jury Instructions (CACI) 2100.*

1 EIGHTEENTH AFFIRMATIVE DEFENSE

2 As and for an eighteenth separate and affirmative defense to each and every cause of  
3 action in the Complaint, defendant alleges that she has not engaged in any unfair business acts,  
4 conduct or practices; and has not received any profits, income, monetary gain or commercial  
5 advantage as a result of the alleged conduct. Furthermore, plaintiff's action is not a class suit and  
6 falls below the private-attorney-general-suit thresholds established by California law for  
7 recovery of attorney's fees under *California Business & Professions Code §§ 17200, et seq.*  
8 Consequently, plaintiff is not entitled to recovery of damages, disgorgement, restitution,  
9 injunctive relief, attorney's fees or costs under *California Business & Professions Code §§*  
10 *17200, et seq.*

11 NINETEENTH AFFIRMATIVE DEFENSE

12 As and for a nineteenth separate and affirmative defense to each and every cause of  
13 action in the Complaint, defendant alleges that the Court lacks personal jurisdiction over  
14 defendant, because of plaintiff's failure to properly serve the summons on defendant.

15 TWENTIETH AFFIRMATIVE DEFENSE

16 As and for a twentieth separate and affirmative defense to each and every cause of action  
17 in the Complaint, defendant alleges plaintiff cannot recover under both Count I and Count II of  
18 the Complaint, because it is practically impossible to have, in the alleged one occurrence) both a  
19 violation of the Cable law (*47 USCS §553*) and satellite law (*47 USCS § 605*) in one transaction.  
20 Plaintiff must elect its remedy.

21 TWENTY-FIRST AFFIRMATIVE DEFENSE  
22 (Reservation of Rights)

23 As discovery has not yet been completed, defendant respectfully reserves her rights to  
24 amend, supplement or state additional affirmative defenses, if the factual bases for stating such  
25 additional defenses are obtained in discovery.

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**WHEREFORE** defendant prays for the following relief:

1. That plaintiff take nothing by its Complaint;
2. That a judgment of dismissal be entered in defendant’s favor;
3. That defendant be awarded her attorney’s fees pursuant to 47 USC§ 605(e)(3)(B)(iii) and 47 USC§ 553(c)(2)(C);
4. That defendant be awarded their costs; and
5. That defendant be granted such other and further relief as the Court may deem just and proper.

Dated: February 17, 2011

NJELITA LAW OFFICES  
  
By: N. Maxwell Njelita  
N. MAXWELL NJELITA  
Attorney for Defendant  
LAURA SYLVIA MENDOZA-GOVAN

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PROOF OF SERVICE

I, the undersigned, declare that I am employed in the County of Alameda, California. I am over the age of eighteen (18) years and not a party to the within cause. My business address is 436 Fourteenth Street, Suite 1107, Oakland, California 94612. I am readily familiar with this law firm's practice of collecting and processing of mail in the ordinary course of business

On February 17, 2011, I served the within:

**ANSWER TO UNVERIFIED COMPLAINT FOR DAMAGES AND DEMAND  
FOR JURY TRIAL**

By placing a true copy thereof enclosed in a sealed envelope, with postage thereon fully prepaid, in the United States mail at Oakland, California, addressed as shown below.

Thomas P. Riley, Esq.  
Law Offices of Thomas P. Riley, P.C.  
First Library Square  
1114 Fremont Avenue  
South Pasadena, California 91020-3227  
*Telephone: (626) 799-9797*  
*Facsimile: (626) 799-9795*  
Attorneys for Plaintiff J & J Sports Productions, Inc.

I declare under penalty of perjury pursuant to the laws of the United States that the foregoing is true and correct and that his declaration was executed on the 17<sup>th</sup> day of February 2011 at Oakland, California.

/s/ N. Maxwell Njelita

N. Maxwell Njelita